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Testimony Before Housing Committee State Senator Kevin Kelly February 8, 2011

Good morning Chairmen Gomes and Butler, Ranking Members McKinney and Miller, members of the Housing Committee. I am state Senator Kevin Kelly, and I represent the 21st District, which is comprised of Monroe, Seymour, Shelton and Stratford. Thank you for allowing me the opportunity today to testify in favor of Senate Bills 300, 301, 304, 306, 466, and 468, which all deal with the affordable housing statutes.

Affordable Housing is an important goal for Connecticut, but certain laws governing affordable housing in Chapter 126a, specifically Section 8-30g of the Connecticut General Statutes, have not been successful. Our current approach is a punitive one that empowers judges and developers rather than encourage municipalities to incorporate affordable housing into their zoning plans. Therefore, little progress has been made in many communities across Connecticut towards our goal of establishing 10% of affordable housing in each town.

Current law places the power to implement affordable housing in the hands of private developers and the courts, rather than our local communities. As you are aware, Section 8-30g of the General Statutes specifically enables developers to sue local zoning boards if their application/development is denied and places the legal burden on the zoning commission to prove with substantial evidence that (1) the denial is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (2) such public interests clearly outweigh the need for affordable housing; and (3) such public interests cannot be protected by reasonable changes to the affordable housing development. If the zoning commission does not satisfy its burden, a court shall revise, modify, remand or reverse the zoning commission denial consistent with the evidence in the record. This system results in massive legal fees to towns.

These statutory requirements provide a significant advantage to developers to override local laws and regulations. Without proper local control, the result is poor zoning and planning, which harms the entire community. Essentially, developers use laws like C.G.S. section 8-30g as a weapon to force their developments on municipalities when they are denied approval or worse, as leverage to force a local zoning board to accept inferior zoning applications for fear of an affordable application.

In particular, the affordable housing appeals process enables developers to construct purportedly affordable housing without conforming to current standards for build quality, building safety and other "codes" which are in place to provide safe homes for Connecticut residents. This statute also narrowly defines affordable housing, as it does not consider what is actually affordable based on the economy and market forces.

Connecticut considers new development as more important than redevelopment and values mortgage products which are more expensive than what the current market affords borrowers. In short, the definition of affordable is a fiction divorced from reality. For example, HUD statistics report 17% of Stratford's housing stock is affordable based on the true indicator of affordable: the cost of the rental unit and the individuals over ability to pay to pay for it. Yet according to the limited definition of affordable contained in CGS 8-30g, Stratford's affordable housing only constitutes about 6%; less than the artificial 10% threshold. Therefore, Stratford is subject to the unfunded state mandate of the CGS 8-30g appeals process despite the fact that almost one-fifth of its housing stock is actually affordable. This denies a municipality the right to preserve open space and encourage smart growth, to protect its citizens by promoting safe housing, or to site affordable housing in the most efficient locations.

As Stratford's Town Attorney, I witnessed the serious impact this law has on the community, the potential degradation to our environment and the threat to public safety caused by the shift of the evidentiary burden of proof from the developer to local land use commissions. Further I also witnessed the success of approving an affordable housing development in accordance with the local municipalities own regulations demonstrating that local municipalities can promote affordable housing on their own.

To that end, I proposed a package of bills to allow local government the ability to make decisions regarding how to provide smart, safe and affordable housing in their communities and our environment. While affordable housing is necessary to ensure that all citizens of Connecticut have a place to live, work and raise a family, we must not allow the destruction of our environment nor the safety of our citizens to be the cost of that development. This package includes:

Senate Bill 300, An Act Repealing The Affordable Housing Land Use Appeals Process.

Senate Bill 301: An Act Concerning Tax Abatements for Certain Affordable Housing Units

Senate Bill 304: An Act Concerning the Use of HUD Criteria in Affordable Housing

Senate Bill 306: An Act Concerning Certificates of Affordable Housing Completion

Senate Bill 307: An Act Concerning Certain Requirements for Affordable Housing

Senate Bill 466: An Act Concerning Tax Abatements for Affordable Housing Units

Senate Bill 468, An Act Amending the Affordable Housing Land Use Appeals Process.

Senate Bill 300 would repeal the Affordable Housing Land Use Appeals Process. If a full repeal is not possible, I ask that the Legislature have faith in the abilities of our local governments and enact the proposed Senate Bill 468 which would place a five year moratorium on the enforcement of section 8-30g of the General Statutes. The five year moratorium would empower municipalities with control over the development and location of affordable housing in their community to establish the safest approach to achieve the state required 10% affordable housing stock in each municipality.

Other bills in the package work to support municipalities in their goal of attaining 10% affordable housing by bringing currently ignored properties into the state's definition of affordable and utilizing existing properties for redevelopment. These bills include:

SB 301 and SB 466 establish tax abatements for existing properties which become deed restricted as affordable for inclusion in the calculation of the 10% affordable housing requirement.

SB 304 would amend the state's definition of affordable to include the United States Department of Housing and Urban Development definition and requirements of affordable housing in Connecticut.

SB 306 would allow municipalities to include "in-law apartments" when calculating affordable housing units. Many of these apartments are essential to enable seniors to age in place and live with family, care-givers and near friends without depleting the limited resources of individuals on fixed incomes who experience increasing healthcare costs.

Again, thank you for hearing my testimony. I urge the committee to give serious consideration to changing the affordable housing statutes, and I would be happy to answer any questions members may have.